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# The Evolution of Religious Freedom as a Universal Human Right: Examining the Role of the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

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## I. INTRODUCTION

The 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (“1981 Declaration” or “Declaration”)<sup>1</sup> is one of the most important documents protecting religious freedom in the international setting. When adopted on November 25, 1981, the Declaration was the culmination of about twenty years of work following the United Nations’ mandate on December 7, 1962, to draft such a document. Now, some twenty years after the adoption of the Declaration, it is an appropriate time to consider the Declaration, its aims, its successes and failures, its relationship to the evolution of religious freedom as a modern human right, its relationship to other important international instruments on religious freedom, and its future. Additionally, it is appropriate to assess the status of international religious freedom and what still needs to be done to end religious intolerance and discrimination.

Although the Declaration offers broad protections for religious freedom, it takes far more than words on paper to make religious freedom a reality for all peoples of the world. Unfortunately, the persecution of minority or disfavored religions remains a serious problem in many parts of the world today. In China, for example, as part of a widening government campaign to force unregistered religious

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1. *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, G.A. Res. 55, U.N. GAOR, 36th Sess., Supp. No. 51, U.N. Doc. A/36/684 (1981) [hereinafter *1981 Declaration*].

groups to register or face dissolution, many religious leaders have reportedly been detained for lengthy investigation, and in some cases beaten. In Pakistan, “Muslim mobs” have destroyed Christian churches and homes,<sup>2</sup> and non-Muslims have received death sentences for comments judged “blasphemous” or “anti-Islamic.” In Saudi Arabia, the Sunni government continues to prohibit, under penalty of imprisonment, virtually all non-Muslim religious worship. The German government, beginning in 1997, placed the Church of Scientology under surveillance; thus, the government may intercept the church’s mail, tap its phones, and infiltrate its meetings.<sup>3</sup> The Islamic Sudanese government continues to wage an aggressive war against residents of the southern part of the country, resulting in the bombing of villages, the enslavement of children, and the torture of worshippers, especially Christians.<sup>4</sup> In Burma, the government reportedly did nothing to stop recent rioters from attacking mosques and Muslim-owned shops; furthermore, soldiers ordered Muslims to convert to Buddhism or leave the country. France recently passed a controversial “anti-sect” bill that targets 173 religious minorities as dangerous threats to domestic peace, with special provisions to disband them for specific kinds of unacceptable behavior.<sup>5</sup> In Afghanistan in August 2001, the Taliban regime arrested eight persons, including two graduates of Baylor University, for attempting to convert Muslims to Christianity. These missionaries were tried for their crime and, while awaiting the judge’s decision, were abandoned in the desert (a release of sorts) by Taliban officials on the run from

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2. See David W. Hendon et al., *Notes on Church-State Affairs*, 42 J. CHURCH & ST. 205, 212 (2000).

3. Actions by the German government against religious minorities such as Scientologists, Jehovah’s Witnesses, Mormons, and Muslims also include the denial of employment, political participation, and state licensure to members of these faith groups. The government has constructed a hierarchical system of religious classification that grants relatively unrestricted rights to religious practice to members of “official” churches (Roman Catholic, Lutheran, and Calvinist) while often restricting rights for members of groups classified as “cults” or “sects.” See Derek H. Davis, *Religious Persecution in Today’s Germany: Old Habits Renewed*, 40 J. CHURCH & ST. 741 (1998).

4. For a brief but insightful analysis of the complexity of religious-political strife in Sudan (and in developing nations generally), see PAUL FRESTON, *EVANGELICALS AND POLITICS IN ASIA, AFRICA AND LATIN AMERICA* (2001). See also Frank C. Baldwin, *A Nation’s Holy War*, 111 THE CHRISTIAN CENTURY 672, 673–74 (1994).

5. See Willy Fautré, *France’s Anti-Sect Bill Could Hinder Religious Freedom*, WORTHY NEWS (July 20, 2000), at [http://www.cesnur.org/testi/fr2K\\_july4.htm](http://www.cesnur.org/testi/fr2K_july4.htm).

the capital city of Kabul during the American-led war on terrorism.<sup>6</sup> Lastly, in the United States, the U.S. Supreme Court has established low standards of protection for unpopular religious minorities.<sup>7</sup>

Moving to even more intractable problems, cultures of religious violence fortified by ancient hatred, like that in the Balkans, are found on every continent in countries large and small, industrialized and impoverished. Questions about religious-political stability may be asked about nations as diverse as Ireland, Kashmir, Sri Lanka, the Indonesian country of East Timor, and countless other places where decades, even centuries, of religious persecution have established seemingly insurmountable obstacles to the maintenance of social order. In the twentieth century alone, by some estimates, as many as 170 million human beings were the innocent victims of ethnic cleansing.<sup>8</sup> The majority of these episodes of annihilation were religiously motivated.<sup>9</sup> One atrocity begets another in an endless cycle of violence that emanates from humankind's most deeply held convictions. Will it ever end? Can the peoples of the world stop persecuting and killing one another in the name of religion?

Clearly, religious persecution remains a part of daily life in all regions of the world. This reality is somewhat ironic, however, because more has been done in the last half-century to enshrine and protect religious liberty than previously had been done in the sum total of human history. Indeed, the international protections for human rights, including religious rights, which have been formulated by the world community in the last half-century, rank as some of humankind's greatest achievements. Yet, the measured results of these protections are not very impressive.

Part II of this article reviews the evolution of the idea of religious human rights that today is enshrined in international documents protecting religious freedom. Part III provides a brief overview of the

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6. John F. Burns, *A Nation Challenged: Hostages; U.S. Flies Aid Workers to Safety in Pakistan*, N.Y. TIMES, Nov. 15, 2001, A1.

7. *Employment Division v. Smith*, 494 U.S. 872 (1990), is a classic case on point in which the Supreme Court abandoned its well-established "compelling interest test" and determined that the state does not have to demonstrate a compelling interest to force members of religious groups (in this case the Native American Church) to comply with generally applicable laws, even if the laws in question conflict with their religious practices.

8. See R.J. RUMMEL, *DEATH BY GOVERNMENT* 9 (1994); see also Derek H. Davis, *Confronting Ethnic Cleansing in the Twenty-First Century*, 42 J. CHURCH & ST. 693 (2000).

9. See Jonathan Fox, *The Ethnic-Religious Nexus: The Impact of Religion on Ethnic Conflict* 9-12 (1998) (unpublished manuscript, on file with author).

major international documents that seek to make religious freedom a universal reality. Part IV focuses on the 1981 Declaration and its role in protecting religious rights and in prohibiting intolerance and discrimination based on religion or belief. Part V proposes that treaty implementation, legislation, education, and the adoption of separation of church and state can help to make religious freedom a reality for people all over the world.

## II. THE PRE-TWENTIETH-CENTURY EVOLUTION OF HUMAN RIGHTS

The evolution of religious human rights throughout history has been gradual, with most of the progress occurring in recent centuries. The idea that all human beings are entitled to religious freedom has arisen primarily as a byproduct of democracy and the belief in the dignity of the human person.<sup>10</sup> For most of history, political orders tended to be monarchical, even totalitarian, believing a common religion to be the foundation of a stable society. Enforcement of religious uniformity became commonplace. World history reveals a high level of religious intolerance, persecution, inquisitions, and religious wars. The modern era's response to this, initially in the West but increasingly in the East as well, has been the democratic principle of religious liberty by which governments declare their neutrality on religious questions, leaving each individual citizen to adopt his or her own religious beliefs without fear of government reprisal.<sup>11</sup>

The primary agent for the development of the democratic idea of "rights" has been the attempt to structure human society according to the highest ruling principles of the universe. These ruling "laws of nature," believed to be accessible by reason to people of all races, classes, religions, and cultures, have usually been understood to exist by divine design, thus, making it possible for humankind to live in harmony with God if only the natural laws can be ascertained and made the basis of positive law. While the roots of natural law theory

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10. For an extensive treatment of the concepts of natural law and human rights and their historical development, see BRIAN TIERNEY, *THE IDEA OF NATURAL RIGHTS: STUDIES ON NATURAL RIGHTS, NATURAL LAW AND CHURCH LAW 1150-1625* (1997).

11. A seminal event in the development of an international conception of religious liberty was the First World Congress on Religious Freedom held in Amsterdam on March 21-23, 1977. For a review of the delegations, events, and presentations of the Congress, see INTERNATIONAL RELIGIOUS LIBERTY ASSOCIATION, *FIRST WORLD CONGRESS ON RELIGIOUS LIBERTY, AMSTERDAM, MARCH 21-23, 1977* (1978).

extend to such classical theorists as Socrates, Plato, Aristotle, and Zeno, the Middle Ages were, above all, the centuries of natural law theory. In medieval Christendom, the laws of nature were thought to supplement Scripture as God's truth; thus, both served simultaneously as the foundation for canon law and civil law, the respective bodies of law of the medieval world's two partners, church and state. Both bodies of law were constructed on the view that God is the source of all law. Law is a part of the universal order and is, therefore, unchangeable. Thus, humankind does not create law; it "discovers" it.<sup>12</sup> Law needs merely to be identified and catalogued.

In classical and medieval societies, the "natural laws" virtually always served to subordinate the individual to the two major communal institutions: church and state. Individuals had few "rights"; instead, they only had "duties" to submit themselves to the more important interests of God, church, empire, king, or feudal lord. As medieval institutions began to break down in the High Middle Ages, however, and as nation-states began to form, the individual began to win a new respect and autonomy and, by the fourteenth century, was widely considered to possess basic rights. Natural law was the mediator in the shift from a state-defined to an individual-defined political identity of the human person.<sup>13</sup> By the seventeenth century, individuals possessed rights as a part of the God-created natural order. There might have been disagreement as to the identity of humankind's natural rights, but the overall importance of these developments was clear: autonomous man was the constituent element in human society.

The most clearly articulated list of rights, however brief, was John Locke's: life, liberty, and property. These became the foundation not only for the American Declaration of Independence but also the English Bill of Rights and the French Declaration of Rights. Locke believed that religion was more private than public and that a major reorientation of government was in order. He believed that all humans have fundamental rights that government is responsible for protecting, such as life, property, and certain liberty rights, including the free exercise of religion. In his scheme, the role of government

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12. For a brief, but insightful account of the merit of medieval law being measured by its age, see Fritz Kern, *The Lack of Legislative Power*, in 2 *THE MIDDLE AGES: READINGS IN MEDIEVAL HISTORY* 235 (Brian Tierney ed., 1970).

13. See generally SUSAN FORD WILTSHIRE, *GREECE, ROME, AND THE BILL OF RIGHTS* 34-39 (1992).

was not to promote religion but, instead, was to protect the right of each citizen to pursue religious truth on his or her own.<sup>14</sup> Locke wanted to change the superstructure of government, believing that government-promulgated religion had too often been the source of society's problems, not the solution. Locke believed that the killing of millions of persons in the name of religion over the centuries was due to government having too much authority over religion and that, with this authority, it was natural for government to seek to enforce its version of true religion, which unfortunately all too often conflicted with the understanding of people of minority faiths. Thus, in the West, there is a long history of religious persecution, witch hunts, inquisitions, and religious wars, all perpetrated in the name of promoting a common religion, the absence of which, it had been always believed, would result in social chaos. Locke thought there was a better way and that society would actually survive letting people choose their own religion. He thought the linkage between religious zeal and civil power must end—that history must close the chapter on the union of church and state.<sup>15</sup>

The United States was the first nation to construct a constitutional framework that officially sanctioned the separation of church and state as a means of guaranteeing religious liberty. This noble experiment was undertaken by the framers in the hope that it would enable America to escape the persecutions and religious wars that

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14. In his famous work *A Letter Concerning Toleration*, Locke stated that:

[if a law compels citizens] to embrace a strange religion, and join in the worship and ceremonies of another Church; men are not in these cases obliged by that law, against their consciences. For the political society is instituted for no other end, but only to secure every man's possession of the things of this life. The care of each man's soul and of the things of heaven, which neither does belong to the commonwealth nor can be subjected to it, is left entirely to every man's self.

John Locke, *A Letter Concerning Toleration*, in *A LETTER CONCERNING TOLERATION IN FOCUS 44* (John Horton & Susan Mendus eds., 1991).

15. Locke's observations of abuses of power enabled by the union of church and state was a principal source of his lifelong distrust of the Roman Catholic Church and, to a lesser extent, the Lutheran Church and the Church of England. He states:

[O]ur modern English history affords us fresh examples [of the corrupting union of church and state], in the reigns of Henry VIII, Edward VI, Mary, and Elizabeth, how easily and smoothly the clergy changed their decrees, their articles of faith, their form of worship, everything according to the inclination of those kings and queens.

*See id.* at 31. For an elaboration of the influence of John Locke upon the American Founding Fathers in separating church and state, see Derek H. Davis, *Reflections on Moral Decline in America: Consulting the Founding Fathers' Views on the Roles of Church and State in Crafting the Good Society*, 42 J. CHURCH & ST. 237 (2000).

had characterized the Christian West since the emperor Theodosius made Christianity the Roman Empire's official religion in A.D. 380.<sup>16</sup> Due to the success of this formula in America, other nations have since adopted the idea of church-state separation as a guarantor of religious freedom, and today, as many as one-third of the nations of the world include formal guarantees of church-state separation in their constitutions. Natural law may have faded from view as the source of people's rights, but the idea of rights, indeed their enshrinement as fundamental to civilized society, remains an important part of international political discourse.

The twentieth century witnessed unprecedented progress toward the internationalization of religious human rights. The original World's Parliament of Religions was held in Chicago in 1893 as part of the Columbian Exposition—a long forgotten but important event in world religious history in which one of the founding principles was that no religious group would be pressured into sacrificing its truth claims.<sup>17</sup> In 1944, the Federal Council of Churches created the Commission to Study the Bases of a Just and Durable Peace. The Commission developed the “Six Pillars of Peace” that mixed tactical measures such as the “reformation of global treaties” and “control of military establishments” with more abstract principles like “autonomy for subject peoples” and the “right of individuals everywhere to religious and intellectual liberty.”<sup>18</sup> Another group, the Commission of the Churches on International Affairs (“Commission”), was highly influential in the passage of the Universal Declaration of Human Rights by the United Nations in 1948 (“Universal Declaration”). In addition to the Universal Declaration, many other significant international documents were developed in the twentieth century with the aim of promoting principles of religious liberty.<sup>19</sup> In the interest

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16. The wars of religion in Christian Europe during the religiously and politically volatile period extending from the sixteenth through the eighteenth centuries are examined in RICHARD S. DUNN, *THE AGE OF RELIGIOUS WARS, 1559–1715* (2d ed. 1979). See also JAMES D. TRACY, *EUROPE'S REFORMATIONS, 1450–1650* (1999); MACK P. HOLT, *THE FRENCH WARS OF RELIGION, 1562–1629* (1995).

17. The first World's Parliament of Religions is chronicled by Richard Hughes Seager in *THE WORLD'S PARLIAMENT OF RELIGIONS* (1995).

18. For more on the “Six Pillars of Peace” and other religious human rights documents, see Robert F. Smylie, *Toward a World Community: The United Nations and the Future*, CHURCH & SOCIETY 1, 85 (Sept.–Oct. 1994).

19. For a useful source that reproduces the texts of all the major human rights documents of the twentieth century, see RELIGION AND HUMAN RIGHTS: BASIC DOCUMENTS

of space, only three of the most significant documents are mentioned here: the International Covenant on Civil and Political Rights (1966); the United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981); and the Vienna Concluding Document (1989). Each of these documents addresses abuses of religious freedom by expounding certain rights thought to be of such significance that they should be universally applicable to the world's peoples. This article will treat these three documents as well as the Universal Declaration in detail.

### III. TWENTIETH-CENTURY INTERNATIONAL DOCUMENTS

Of the four major international documents that have universalized the principle of religious freedom in this century, by far the most central is the Universal Declaration of Human Rights ("Universal Declaration"), passed by the United Nations in 1948.<sup>20</sup> This landmark document recognizes a broad spectrum of religious rights. Article 18 is the key text:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.<sup>21</sup>

The Universal Declaration vigorously asserts that individual religious differences must be respected. It embraces the modern political principle that one of human government's main roles is to protect peoples' religious choices, not to mandate religious conformity. It took centuries, even millennia, of religious wars and government-perpetrated religious persecution for the majority of modern nation-states to come to this position, but the principle is now widely accepted, especially in the West. The modern principle of religious freedom by which governments declare their neutrality on religious questions, leaving each individual citizen, on the basis of his or her

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(Ted Stahnke & J. Paul Martin eds., 1998).

20. *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1948) [hereinafter *Universal Declaration*].

21. *Id.* art. 18. The full text of the document along with an insightful analysis of the historical and political context of its development may be found in CAROL DEVINE ET AL., *HUMAN RIGHTS: THE ESSENTIAL REFERENCE* 57-116 (Hilary Poole ed., 1999).



own human dignity, to adopt his or her own religious beliefs without fear of reprisal, is an outgrowth of the Enlightenment era, but its near universal recognition in the Universal Declaration is undoubtedly a human milestone.

The Universal Declaration refers to itself as “a common standard of achievement for all peoples and all nations . . . .”<sup>22</sup> Written in the aftermath of the unspeakable horrors of World War II, it provides a standard by which the peoples of the world may learn to live in peace and cooperation. If the world enjoys a greater measure of peace in the present millennium than in previous ones, it is possible that future historians will look to 1948 as the beginning of the new era of peace, much as they now look, for instance, to 313 C.E. (Edict of Milan) as the beginning of the Constantinian union of church and state, or 1517 (Luther’s posting of the ninety-five Theses) as the beginning of the Protestant Reformation. There is simply no way to overstate the significance of the Universal Declaration of Human Rights.<sup>23</sup>

Whereas the Universal Declaration imposed a *moral* obligation upon all signatory nations, later documents went further in creating a *legal* obligation to comply with their broad principles. For example, the provisions of the International Covenant on Civil and Political Rights (“1966 Covenant”),<sup>24</sup> ratified to date by 148 nations,<sup>25</sup> are mandatory for states that have ratified it. The 1966 Covenant prohibits religious discrimination, as stated in Article 2(1), “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Article 18 guarantees the same rights listed in Article 18 of the Universal Declaration, then adds more, including the right

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22. *Universal Declaration*, *supra* note 20, pmbl.

23. The authors of HUMAN RIGHTS: THE ESSENTIAL REFERENCE state that the *Universal Declaration* “marked the foundation of the modern human rights movement.” See DEVINE ET AL., *supra* note 21, at 59.

24. International Covenant on Civil and Political Rights, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171, *available at* [http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm).

25. The 1966 Covenant did not become “enforceable” until December 23, 1975, when it achieved signature by thirty-five member states of the United Nations. See DAVID JOHN THELEN & LYNN ROBERT BUZZARD, THE PROTECTIONS OF RELIGIOUS LIBERTY IN INTERNATIONAL LAW 34 n.121 (1990). Thelen and Buzzard provide a nice summary of the 1966 Covenant and its development. See *id.* at 33–40. See Office of the United Nations High Commissioner for Human Rights, *Status of Ratifications of the Principal International Human Rights Treaties*, at <http://www.unhchr.ch/pdf/report.pdf> (last modified Feb. 8, 2002) for a list of countries that have ratified the 1966 Covenant.

of parents to direct the religious education of their children.<sup>26</sup> Article 20 prohibits incitement of hatred against others because of their religion, and Article 27 protects members of ethnic, religious, or linguistic minorities from being denied the enjoyment of their own culture. Moreover, the 1966 Covenant provides a broad definition of religion that encompasses both theistic and nontheistic religions as well as rare and virtually unknown faiths.

The United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, enacted in 1981,<sup>27</sup> is a fundamentally important document protecting religious rights. Articles 1 and 6 provide a comprehensive list of rights to freedom of thought, conscience, and religion. These include the right (1) “[t]o worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes”;<sup>28</sup> (2) “[t]o establish and maintain appropriate charitable or humanitarian institutions”;<sup>29</sup> (3) “[t]o make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief”;<sup>30</sup> (4) “[t]o write, issue and disseminate relevant publications in these areas”;<sup>31</sup> (5) “[t]o teach a religion or belief in places suitable for these purposes”;<sup>32</sup> (6) “[t]o solicit and receive voluntary financial and other contributions from individuals and institutions”;<sup>33</sup> (7) “[t]o observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one’s religion or belief”;<sup>34</sup> and (8) “[t]o establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.”<sup>35</sup>

The 1989 Vienna Concluding Document contains provisions similar to the 1948, 1966, and 1981 documents, urging respect for

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26. THELEN & BUZZARD, *supra* note 25, at 35.

27. *1981 Declaration*, *supra* note 1.

28. *Id.* art. 6(a).

29. *Id.* art. 6(b).

30. *Id.* art. 6(c).

31. *Id.* art. 6(d).

32. *Id.* art. 6(e).

33. *Id.* art. 6(f).

34. *Id.* art. 6(h).

35. *Id.* art. 6(i). For an excellent discussion of the *1981 Declaration*, see Natan Lerner, *Religious Human Rights Under the United Nations*, in *RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: LEGAL PERSPECTIVES* 79, 114–27 (Johan D. van der Vyver & John Witte, Jr. eds., 1996) [hereinafter *LEGAL PERSPECTIVES*].

religious differences, especially among various faith communities. The participating nations, that is, those who are members of the Conference on Security and Cooperation in Europe, specifically agree to ensure “the full and effective exercise of the freedom of thought, conscience, religion or belief.”<sup>36</sup> The document includes a detailed list of religious human rights, similar to the enumeration of rights set forth in the 1981 Declaration.<sup>37</sup>

These international documents are formally binding only on those nations that take steps to give them legal status. In other words, they are not self-executing. They are not presently binding on the United States; although, as John Witte, Jr. has remarked, “they carry ample moral and intellectual suasion, and anticipate at least some of the cardinal principles of the budding world legal order.”<sup>38</sup> Witte goes on to compare religious liberty norms contained in the various international documents with recognized norms under American law, concluding that the international standards might offer a more “unified framework” than American law due to the latter being shaped around judicially constructed, mechanical, and sometimes conflicting tests under the First Amendment’s Establishment Clause and Free Exercise Clause.<sup>39</sup>

While the religious liberty protections contained in the international documents do not carry the effect of law, they are shaping human rights law in participating nations, and they are a key feature of a developing and, hopefully, more peaceful world order. Nevertheless, today’s world is one in which religion is a source of great conflict, and fundamental principles of religious liberty are still more abused than respected.

#### IV. ASSESSING THE 1981 DECLARATION

Some have argued that the 1981 Declaration is the most impor-

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36. See Peace Resource Center, *Concluding Document of the Vienna Meeting 1986 of Representatives of the Participating States of the Conference on Security and Co-operation in Europe*, principle 17, at <http://www1.umn.edu/humanarts/peace/docs/oscevienna.html> (last visited Jan. 25, 2002).

37. For a very helpful discussion of the importance of the Vienna Concluding Document, see W. Cole Durham, Jr., *Perspectives on Religious Liberty: A Comparative Framework*, in *LEGAL PERSPECTIVES*, *supra* note 35, at 37–43.

38. John Witte, Jr., *The Essential Rights and Liberties of Religion in the American Constitutional Experiment*, 71 *NOTRE DAME L. REV.* 371, 438 (1996).

39. See *id.*

tant international document regarding religious rights and prohibiting intolerance or discrimination based on religion or belief. If the importance of a document were measured in terms of its path-breaking qualities, the 1948 Universal Declaration would undoubtedly be most important.<sup>40</sup> If importance were measured in terms of an instrument's enforceability in courts, the 1966 Covenant would be the most important. But if by importance we refer to the comprehensiveness of rights addressed and the degree to which a document is looked to by the international community to define the religious rights that should be respected, then it is clearly the 1981 Declaration that deserves the "most important" label.

We have already looked briefly at some of the rights protected by the 1981 Declaration. Although it would be useful to address these provisions in more detail, this article focuses on three important issues that emerge recurrently during discussions of the 1981 Declaration. First, this article discusses the definition of the term "religion." Next, this article considers whether the right to convert from one religion to another should be a protected right, and, finally, this article considers whether the Declaration should be converted to a convention.

From day one, a recurrent criticism of the Declaration was that it does not define the term "religion." In the document's preparation, communists argued that use of the word "religion" did not extend the principle of intolerance to atheism. They felt that nonbelief should be protected on the same level as belief and that the use of the word "religion" favored belief over non-belief. Several Westerners countered with the view that the document was intended to protect *religious* rights, that atheism was not religious in nature, but that atheism would likely find adequate protection in the text in any event.<sup>41</sup> A compromise was worked out: the insertion of the word

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40. Emphasizing the seminal, paradigm-shifting importance of the 1948 Universal Declaration, Natan Lerner states, "Most of the principles proclaimed by the Universal Declaration on Human Rights are seen today as reflecting customary international law and some of them as constituting *jus cogens*, that is, peremptory rules that cannot be derogated except by similar new rules developed by international law." See LEGAL PERSPECTIVES, *supra* note 35, at 82.

41. David Little observes, "The difficulty is that the Declaration and the relevant provisions in the other instruments clearly intend to include under their protection thoughts and beliefs that are explicitly *not* religious, and that may even be anti-religious." See David Little, *Studying "Religious Human Rights": Methodological Foundations*, in LEGAL PERSPECTIVES, *supra* note 35, at 49-50 (citing Elizabeth Odio Benito, *Study of the Current Dimensions of the Problems of Intolerance and of Discrimination on Grounds of Religion or Belief*, U.N. Doc.

“whatever” before the word “belief” in the preamble and in Article 1(1). In retrospect, this has turned out to be a successful compromise since everyone now understands that the Declaration protects all world views, including agnosticism, atheism, and rationalism.

A second controversial issue was the right of a person to change religions, i.e., to convert from one religion to another, and whether this should be a protected right. This matter already had created difficulties during the drafting of both the Universal Declaration and the 1966 Covenant. Since Muslim law generally considers conversion from Islam to any other religion an act of blasphemy, Muslims objected to language in these instruments that would have made converting from one religion to another an unqualified right. Based on this belief, most Muslim regimes have little tolerance for non-Muslim missionaries and view their proselytizing efforts as encouraging Muslims to commit blasphemy. In drafting the 1981 Declaration, references to the right to change one’s religion were deleted from the text in both the preamble and Article 1, departing, therefore, from the language used in the Universal Declaration and the 1966 Covenant. Consequently, the text of the 1981 Declaration was weakened, but to satisfy those who objected to the deletion, a new Article 8 was added, which provides that “[n]othing in the present Declaration shall be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights and the International Covenants on Human Rights.”<sup>42</sup> Thus, nations that do not ratify the Covenants can claim that the right to change one’s religion, although included among the rights enumerated in the Universal Declaration and the 1966 Covenant, cannot be afforded the status of international law. Advocates of the right to convert to a new religion were not particularly happy about this development but were pleased that at least the right to change one’s religion was not derogated specifically in the text. In fact, there are some who suggest that the inclusion of Article 8 preserves the integrity of the right to change one’s religion as fundamental. When examining the combined effect of the Universal Declaration, the 1966 Covenant, and the 1981 Declaration, one expert concludes:

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E/CN.4/Sub.2/1987/26 (1987)).

42. *1981 Declaration*, *supra* note 1, art 8. For a more detailed discussion of the political maneuvering that took place over the wording of Article 8 of the *1981 Declaration*, see BAHIIYIH G. TAHZIB, *FREEDOM OF RELIGION OR BELIEF: ENSURING EFFECTIVE INTERNATIONAL LEGAL PROTECTION* 184–85 (1996).

Although they are varied slightly in wording, all meant precisely the same thing: that everyone has the right to leave one religion or belief and to adopt another or to remain without any at all. This meaning . . . is implicit in the concept of the right to freedom of thought, conscience, religion or belief, regardless of how that concept is presented.<sup>43</sup>

A third question, whether the Declaration should become a convention, is an especially difficult one. Even though the Declaration does not have binding status, it carries the weight of a solemn U.N. statement and a great degree of moral suasion. Therefore, it has an indefinable legal effect, such that it carries an expectation of obedience within the international community to the degree that it is seen as the standard bearer of religious human rights. As Bahiyih Tahzib has commented, "States regard the 1981 Declaration, or at least some of its provisions, as normative in nature and part of customary international law."<sup>44</sup> The answer to whether a convention would strengthen or weaken the Declaration is probably inconclusive.

The Special Rapporteurs, Angelo Vidal d'Almeida Ribeiro and Abdelfattah Amor, have both been strong proponents of a convention approach. They see the Declaration as weak in its ability to force compliance and see no point in perpetuating this state of affairs.<sup>45</sup> As key figures in the implementation process, they regularly see and report instances of noncompliance with the Declaration, and, thus, appreciate more than most the need for stronger enforcement measures. They know, in ways that others do not, that the standards of the Declaration are not being met. Upon examining their annual reports, one notes that there are recurrent violations of the Declaration, especially in the areas of one's right to have the religion or belief of one's choice, the right to change one's religion, the right to

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43. Elizabeth Odio Benito, *Study of the Current Dimensions of the Problems of Intolerance and of Discrimination on Grounds of Religion or Belief*, ¶ 190, U.N. Doc. E/CN.4/Sub.2/1987/26 (1987).

44. TAHZIB, *supra* note 42, at 187 (footnotes omitted).

45. In his 1990 report, Ribeiro stated that "[a]lthough the international system has a number of mandatory norms in the area of freedom of religion or belief, the persistence of the problem of intolerance and discrimination in this field calls for the preparation of an international instrument dealing specifically with the elimination of this phenomenon." *See id.* at 206 (quoting A. Vidal D'Almeida Ribeiro, *Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, U.N. Doc. E/CN.4/1990/46 (1990)).

enjoy unmolested worship, and the right to observe particular religious holidays or observances.

Elizabeth Odio Benito recommends that the international human rights community continue to work toward the adoption of a convention in coming years. She suggests that a range of reports be prepared that supplement the annual reports prepared by the Special Rapporteur and that highlight the ways in which religious human rights abuses violate the 1981 Declaration as well as other important international documents. She stresses the need for studies on a range of subjects, including discrimination against women by governments and various faith traditions, discrimination against minority religions by major religions, and acts of discrimination by governments and traditional religions against new religions.<sup>46</sup>

My own view is that a convention would be premature at this time. Continuing work, even serious drafting, should be ongoing in the movement toward a convention, but it seems to me that so many differences still exist among major religious traditions that it is too early to force anyone's hand toward universalizing certain human rights. Obviously, raising the Declaration to treaty status would discourage some nations from signing on, thus ending progress with those nations in the ongoing effort to convince them to embrace and enforce the principles of the Declaration.

Furthermore, many countries oppose the convention approach, believing that a convention would rob them of national sovereignty and the right to manage their own affairs. Rather, dialogue should continue, the U.N. and the international community should continue to expose religious human rights abuses where they take place, and scholars should continue to plumb the depths of various religious traditions to find common ground on which different religions can agree. These activities should always take place in a spirit of greater mutual accountability among the nations of the world for violations of human rights. As the world moves increasingly toward a world legal order, the universalization of human rights seems inevitable; however, we must be patient and must realize that this process has only recently begun.

Clearly, the Declaration is considered a valuable guide for the uniform interpretation and application of the various international statements on religious freedom. In this regard, it has emerged as the

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46. See Benito, *supra* note 43.

document with the most prestige among all the international human rights documents; it has become the highest standard by which religious human rights are upheld. R.S. Clark says this about the usage of the 1981 Declaration:

The best use of the Declaration may well be to give more concrete content to the general norms of the Universal Declaration and the Covenant on Civil and Political Rights. Thus, it might be utilized when States Reports are being considered under the covenant or when complaints are being examined under its Optional Protocol. Similarly, the Declaration should be referred to when allegations of gross violations of human rights are being considered by the Commission on Human Rights under its public "1235" procedure or the confidential "1503" procedure. It should be one of the documents in the arsenal of the Secretary General when he is using his good offices to respond to violations, and would play a similar role in the ombudsman-like work of the proposed United Nations High Commissioner for Human Rights.<sup>47</sup>

The very adoption of the 1981 Declaration, especially when considering the difficult and protracted debates that preceded its adoption, highlights the importance that the international community wishes to place upon religious human rights. Because the Declaration has particularized certain rights and freedoms, it has provided a basis for a program of measures and action by the United Nations, the nations of the world, and people everywhere.<sup>48</sup>

#### V. MAKING RELIGIOUS FREEDOM A REALITY IN THE TWENTY-FIRST CENTURY

Religious persecution continues to be a serious problem worldwide, despite significant legal steps taken by the world community to deal with it.<sup>49</sup> Ancient hatreds that contribute to our present situation of widespread religious intolerance will not resolve themselves. However, if the world is receptive to learning from past mistakes and is willing to courageously take action when it is called for, the task of bringing about religious liberty for all peoples may not be as hopeless

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47. Roger S. Clark, *The United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, 31 CHITTY'S L.J. 23, 29 (1983).

48. See TAHZIB, *supra* note 42, at 189.

49. For reflections on additional causes of religious intolerance in the modern setting, see Derek H. Davis, *Thoughts on Religious Persecution Around the Globe: Problems and Solutions*, 40 J. CHURCH & ST. 279 (1998).



as we think. We must act. Otherwise the world is left only to suffer the fatal consequences of Edmund Burke's insight: "The only thing necessary for the triumph of evil is for good men to do nothing."<sup>50</sup> In order to make religious liberty a global reality, action in the following areas should be taken: treaty implementation, legislation, education, and separation of church and state.

#### *A. Treaty Implementation*

More nations should integrate the provisions of the international human rights treaties into their own legal systems. The United States, for example, roundly criticized for "preaching" human rights to everyone else while being unwilling to obligate itself to the human rights provisions of the treaties described above, could take formal action to implement Article 18 of the 1966 Covenant. President George Bush, Sr. urged this action, declaring that ratification would "strengthen our ability to influence the development of appropriate human rights principles in the international community and provide an additional and effective tool in our efforts to improve respect for fundamental freedoms in many problem countries around the world."<sup>51</sup> Although the Senate ratified the 1966 Covenant on April 2, 1992, the Senate limited its obligation under the document by designating its provisions as nonself-executing, i.e., not directly enforceable in the courts. By implementing Article 18's religious liberty provisions, the Senate would be endorsing them in a "universalizing" context, thus, encouraging American courts to examine issues of religious liberty in the broader context of a developing, collective world understanding.

#### *B. Legislation*

Governments around the world should enact meaningful legislation designed to curb religious persecution. In 1998, the U.S. Congress passed the International Religious Freedom Act. This Act mandates an annual report prepared by the State Department that assesses and describes violations of religious freedom in each country. The Department is to consider the suggestions of a nine-member

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50. Edmond Burke Quotes, at <http://www.chesco.com/~artman/burke.html> (last visited Jan. 29, 2002).

51. See Davis, *supra* note 49, at 286.

U.S. Commission on International Religious Freedom and of an Ambassador at Large for International Freedom. Based on the report, the U.S. President can impose a range of penalties and sanctions on countries found to be violators of religious freedom. The legislation is controversial internationally, but the measure has thus far proven effective in improving the religious freedom records of many countries. The law does not attempt to impose "the American way" on other nations. Rather, it draws on the universally accepted belief in the inviolable dignity of the human person and of the universal rights that flow from that belief. The United States would welcome similar activity by other nations.

### *C. Education*

Action must be taken to make the peoples of the world aware of the staggering level of religious persecution that is common practice worldwide. More conferences and symposia should highlight this theme, and more support (verbal and monetary) should be provided to human rights organizations such as Human Rights Watch, Christian Solidarity International, and the International Religious Liberty Association, which monitor human rights abuses around the world and report such abuses to governments and other concerned groups. One of the most innovative efforts in recent years to educate the youth of the world about religious tolerance has been the creation of the International Summer School on Religious Tolerance. Organized by a number of organizations, principally by the Center for Religious Information and Freedom in Ukraine, this project held its first summer school in July 2001 at the Ukrainian Institute of Arts and Sciences. It was perhaps the first such school of its kind. The sixty-eight participants of this school represented approximately ten different religious denominations and included undergraduate and postgraduate students from Kyiv, L'viv, Odessa, Kharkiv, Donetsk, Ternopil, Ivano-Frankivsk, Rivne, Chernivtsi, Poltava, Simferopol (Ukraine), Russia, Poland, and the United States.

The participants of the school attended lectures presented by specialists in history, sociology of religion, church-state relations, religious freedom, and tolerance. They also met with representatives of various religious denominations, including Orthodoxy, Catholicism, Islam, Protestantism, Hinduism, Krishnaism, and the Bahai Faith. Guest dignitaries of the school included well-known government and

civic leaders, diplomats, and representatives of international foundations and universities.

The participants of the school received training based on the theory of interdenominational and interreligious relations. They obtained practical experience through social interactions by conversing with each other and with guest lecturers as well as by living with representatives of different religions.

The school's environment encouraged the building and strengthening of friendly relations between youth of different world-view orientations and cultural traditions. The school supported the principles of international and domestic law defending human rights, especially those that relate to freedom of religion.

All the participants accepted and signed a declaration on religious tolerance. The students agreed to help organize and conduct interdenominational dialogues in the spirit of religious tolerance in their home countries. The students also agreed that more youth need to be included in the process of enlightenment and education about religion and confirmed that they would support objective and regular press coverage on events related to religious tolerance.

The goal of the school's organizers is to continue conducting regular International Summer School on Religious Tolerance meetings and courses, with the next one planned for Summer 2002 in Kiev, the capital of Ukraine. They hope to organize the next meeting of the School for undergraduate and post-graduate students from most major universities of Ukraine, Russia, Belarus, countries of Eastern and Central Europe, as well as from the United States and Canada.<sup>52</sup>

#### *D. Separation of Church and State*

There must be renewed efforts to increase the acceptance of separation of church and state, which is respect by all political, religious, and social institutions for the modern view that political society's primary interest should not be in advancing religion but should be in fostering peace, justice, freedom, and equality. The obvious tension here is that religion historically has been the basis for every dimension of life, including the political. As the eminent Quaker

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52. E-mail from Liudmila Filipovich, Executive Director, Center for Religious Information and Freedom, Kiev, Ukraine, to Derek H. Davis, Director, J.M. Dawson Institute of Church-State Studies, Baylor University, Waco, Texas (on file with author).

William Penn noted in 1692, “government seems to me a part of religion itself, a thing sacred in its institution and end.”<sup>53</sup> Penn was a budding church-state separationist who increasingly moved toward the view that religion is fundamentally a personal, individual concern and that government’s role should be the protection of all religious outlooks rather than the advocacy of one. Since Penn’s day, nation-states have increasingly adopted this perspective, and this century’s human rights documents have done the same. As already suggested, this perspective must be taught by educational institutions through a range of curricula that confront the interaction of religion and government in the modern world.

## VI. CONCLUSION

Members of the human community owe it to themselves and to their progeny to make religious freedom a reality for everyone. There is no more important human project as the twenty-first century begins. The 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief has become an important milestone and tool in these efforts since its adoption twenty years ago. May it become an even more effective instrument toward extending religious freedom to people everywhere in the next twenty years and beyond.

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53. WILLIAM PENN, PREFACE TO THE FRAME OF GOVERNMENT (1682), *available at* <http://press-pubs.uchicago.edu/founders/documents/v1ch17s4.html> (last visited Jan. 29, 2002).